

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

United States of America,

Plaintiff,

vs.

Myron Johnson,

Defendant.

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
Part One**

Case No.: 1:22-CR-00185

Part One

Part One of the Defendant's Motion to Dismiss solely deals with the speedy trial act violation, 18 USC 316. The reason defense counsel divided this Motion into two parts is for the purpose of securing a prompt dismissal of the Indictment considering the upcoming trial on the Court's calendar for April 18, 2023.

After the dismissal of the Indictment and cancellation of the upcoming trial, Part Two of the Defendant's Motion to Dismiss will address the issue of whether the Indictment should be dismissed with or without prejudice.

Introduction

Defendant, Myron Johnson, by and through his attorney of record, Jeff A. Bredahl, Bredahl & Associates, P.C., 3431 4th Avenue South, Suite 201, Fargo North Dakota 58103, brings this Motion to Dismiss the Indictment in the above-entitled case for the reason he has been denied rights guaranteed to him by the Speedy Trial Act, 18 USC 3161. The denial of Defendant's rights includes a violation of the period of 208

days between his initial appearance and the date set for his trial. More specifically, the 70-day limitation set by 18 USC § 3161 (The Speedy Trial Act) for trial to commence after a defendant's first appearance. In addition, there has been a lack of or insufficient justifications for any period of delay or continuance of the 70-day limitation within the Speedy Trial Act.

Background

In this case the 70-day delay allowed by the statute began to run on September 23, 2022, when Myron Johnson first appeared before the Magistrate. Docket #4. A Complaint was filed with the Court on September 19, 2022, Docket #1. On October 5, 2022, an Indictment was filed with the Court, Docket #19. On October 14, 2022, a Substitution of Counsel was filed with the Court for the appearance of Attorney Jeff A. Bredahl. Docket #21. On October 17, 2022, Myron signed a Stipulated Discovery and Protective Order with the Government, Docket #23, and the Order was filed and signed by the Court on that same day.

On March 21, 2023, the Court scheduled an Arraignment hearing for the next day via phone. Docket #26. The Arraignment was held via phone on March 22, 2023. Docket #27. The Arraignment was 181 days after Myron's first appearance before the Court and 169 days after the Indictment was filed. Myron Johnson has been in custody in Ward County Jail throughout the 208-day period of time.

Speedy Trial Act, 18 U.S.C. § 3161

By statute, 18 U.S.C. § 3161 (The Speedy Trial Act) Congress has legislated what does and does not satisfy the requirements for a trial to be "speedy". 18 U.S.C.

3161(c)(1) (requiring trial to begin within 70 days after a defendant is charged or makes an initial appearance). Congress also included a detailed list of excusable periods of delay for the Court to consider when computing the time within which trial must start. 18 U.S.C. ¶ 3161(h).

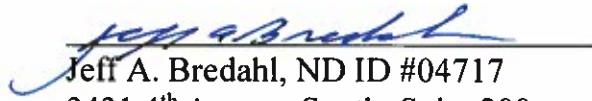
In United States v. Johnson, the Circuit Court found a violation of Rene Johnson's rights when the district court sua sponte granted a fourth continuance because of a scheduling conflict. 990 F.3d 661, 669 (8th Cir. 2021). Additionally, the Circuit Court found that the previous three continuances did not violate Rene Johnson's right to a speedy trial because the district court had made specific "ends-of-justice" findings on the record as required by the Speedy Trial Act. Id. However, in our current case, this Court has not made any "ends-of-justice" findings on the record to support any continuance, and separate from the two day continuance this Court granted the defendant on September 27. Docket # 15, there has not been another continuance requested. If the defendant makes a "meritorious and timely motion to dismiss, the district court must dismiss the charges, though it may choose to dismiss with or without prejudice." United States v. Zedner, 547 U.S. 489, 499 (2006).

Myron Johnson is entitled to a dismissal for reasons of the violations of his rights under 18 USC § 3161, Speedy Trial Act.

Dated this 17th day of April, 2023.

Respectfully submitted,

BREDAHL & ASSOCIATES, P.C.


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